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In the Supreme Court of the United States

OCTOBER TERM, 1963

H. A. Twillegear, P. V. Jacobson, Les H. Hayes and Karl Karlsson,
Petitioners,

vs.

Quincy Columbia Basin Irrigation District and South Columbia Basin Irrigation District,
Respondents.

NO. 825

Petition For Writ of Certiorari

To The Supreme Court
Of The State of Washington

FLORENCE MAYNE MERRICK
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Pasco, Washington

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To the Supreme Court of the State of Washington

COME NOW H. A. Twillegear, P. V. Jacobson, Les H. Hayes, and Karl Karlsson, petitioners herein, in accordance with 28 USC 1257 (3) and the Rules of this Court and pray that a writ of certiorari issue to review the judgment of the Supreme Court of Washington entered in the above-entitled cases on November 14, 1963, and respectfully show the Court as follows:

I. Opinions Delivered In Courts Below

The first opinion herein was rendered on November 30, 1962 by the Superior Court of the State of Washington In and For the County of Grant, Cause No. 14298. The Honorable Lawrence Leahy, Judge. This opinion, which is unreported, is appended hereto as "Appendix A".

The second opinion herein was rendered on May 21, 1963 by the Superior Court of the State of Washington In and For the County of Franklin, Cause No. 11517, The Honorable John Thomas Day, Judge. This opinion, which is unreported, is appended hereto as "Appendix B".

The third opinion herein was rendered on October 10, 1963 by the Supreme Court of the State Of Washington, Department II, Case No. 37003, after the above-mentioned causes, which posed essentially the same issues, were consolidated on appeal (R. 0245). This opinion is reported at 63 Wash. (2nd) 114, and is appended hereto as "Appendix C".

II. Jurisdiction

Petitioners' Petition for Re-hearing was denied by the Supreme Court of the State of Washington on the 14th day of November, 1963, and the Judgment for which review is sought was entered on the 14th day of November, 1963, (R. 0251).

The jurisdiction of this Court is invoked under 28 USC 1257 (3).

III. Question Presented For Review

When a reclamation project repayment contract, between a State Irrigation District and the United States, has been "confirmed" by a State court of competent jurisdiction, in accordance with the requirements of 43 USC 511, may such repayment contract be thereafter summarily revised and amended by the parties alone, without further reference to said court?

IV. Statutes Involved

The federal statutory provisions are 43 USC 511 and the former 16 USC 835a (e) (ii) which was operative at all times herein material. These statutes are appended hereto, in their entirety, as "Appendix D". Related State statutes involved are Sub-sections 5 (d), and 6 (b) of Chapter 275, Laws of Washington, 1943 and Section 87.03.200, Revised Code of Washington. These State statutes are also appended hereto as part of "Appendix D".

V. Statement

The facts material to consideration of the question herewith presented for review are as follows:

1. In 1945, the Quincy Columbia Basin Irrigation District and the South Columbia Basin Irrigation District, both being municipal corporations of the State of Washington, entered into essentially identical original repayment contracts with the United States relative to the Columbia Basin Project (R. 0002, 0135).

2. Article 40, in each of the original repayment contracts aforesaid, reads as follows:

"Lands within the District prior to the District election with respect to this contract may be withdrawn therefrom on compliance with the provisions of Sub-Section 5 (d) of Chapter 275, Laws of Washington, 1943".

3. At all times herein material, Sub-Section 5 (d) of Chapter 275, Laws of Washington, 1943 and USC 835a (e) (ii) both provided that:

"Without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before the date fixed by the board between a date ten days after the official notice of the election on the repayment contract and the date of such election. The date limiting the time of such filing shall be announced in the notice of the proposed election and lands for which the notice is filed shall be deemed excluded from the district for all purposes as of the time of the filing."

4. At all times herein material, Chapter 275 also provided:

"*Such of the limitations and provisions of subsection (a) through (d) of Section 5 as are in-*

cluded in repayment contract between the district and the United States shall govern all lands within the district unless otherwise provided in such contract and shall govern notwithstanding any other provisions of the law of this State. (Sub-section 6 (b), Chapter 275, Laws of 1943, codified as Revised Code of Washington, Section 89. 12. 060).

5. Said original repayment contracts, including Article 40 as quoted above, were approved by the landowner-electors in statutory elections (Section 87. 03. 200, Revised Code of Washington) held in each of the irrigation districts and were thereafter confirmed by the proper Superior Courts of the State of Washington. The original Quincy Columbia Basin Irrigation District repayment contract was confirmed by judgment of the Superior Court for Grant County on June 13, 1946 and the original South Columbia Basin Irrigation District repayment contract was confirmed by judgment of the Superior Court for Franklin County on August 26, 1946. (R. 0002,-0135).

6. *On August 7, 1951, the directors of the Quincy Columbia Basin Irrigation District and officials of the Bureau of Reclamation, United States Depart-*

ment of Interior, purported to revise and "amend" the 1945 *repayment contract so as to change Article* 40 *aforesaid and do away with the provisions thereof relating to withdrawal of land from the District, which were quoted hereinabove. Such amendment was not, at any time, submitted to the electors of the District for their approval under Section* 87: 03. 200, *Revised Code of Washington, nor was such amendment submitted to the Grant County Superior Court, or any other court, for confirmation and no judicial confirmation of such amendment ever was sought or granted. The directors of the South Columbia Basin Irrigation District and officials of the Bureau of Reclamation likewise purported to so amend Article* 40, *on August* 10, 1951, *without reference to the electors of such district or any court of law.* (R. 0245).

7. At all times herein material, 43 USC 511 provided, in part, as follows:

> "... *no contract* with an irrigation district shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed by a decree of a court of competent jurisdiction . . ." (Emphasis supplied)

8. On December 19, 1961, the Board of Directors of the Quincy District aforesaid approved proposed

additional amendments to the 1945 repayment contract aforesaid. On January 2, 1962, said Board adopted a resolution providing for a special election to be held on February 13, 1962 at which time there would be submitted to the electors of the district the proposed amendatory contract for approval or disapproval. In an attempt to effectuate said resolution, as it related to the holding of the special election, the Quincy District sought to give notice thereof. Such notice did not specify any date before which an elector could withdraw land from the District by filing a written notice, which is to say that such notice did not comply with the provisions of 16 USC 835a (e) (ii) which were also the provisions of Sub-section 5 (a) of Chapter 275, Laws of Washington, 1943. (R. 0002).

9. The Board of Directors of the South Columbia Basin Irrigation District likewise resolved to and did give notice of a special election to the electors of such District, relative to proposed amendments to the 1945 repayment contract. This notice of the South District specified January 15, 1963, as the date of the election, but did not specify any date before which withdrawals of land could be made. This is to say that the notice of election by the South District also failed to comply with the provisions of 16 USC 835a (e) (ii) and the

corresponding provisions of State law hereinabove cited. (R. 0135).

10. At the special elections, which were "noticed" as aforesaid, the electors, in both the Quincy and South Districts, approved amendments to the 1945 repayment contract theretofore agreed to by the District Directors and the Bureau of Reclamation. Thereafter, such amendments were formally executed by proper officials of both Districts and of the said Bureau. (R. 0002, 0135).

11. Thereafter, the Directors of the Quincy District petitioned the Superior Court of the State of Washington for Grant County for confirmation of their amendatory contract. Petitioner Twillegear herein, a qualified elector of said District, opposed said petition by Demurrer and Answer and contended the notice of election aforesaid was defective in that it *did not facilitate the right to withdraw land envisioned by* 16 USC 835a (*e*) (*ii*). After hearing, said amendatory contract was confirmed by judgment of said Grant County Court which was entered on December 14, 1962. (R. 0092).

12. The Directors of the South District petitioned the Superior Court of the State of Washington for Franklin County for confirmation of their amend-

atory contract. P. V. Jacobson, Les H. Hayes, and Karl S. Karlsson, petitioners herein, opposed such petition by their Demurrer and Answer, and contended that the notice of the material election *was not in keeping with the provisions of* 16 USC 835a (*e*) (*ii*) *because it did not recognize the right to withdraw land*. After hearing, said Franklin County Court denied confirmation of such amendatory contract by judgment entered on April 14, 1963. (R.0117).

13. The appeal of petitioner Twillegear in the Quincy confirmation case and the appeal of the South District in its case, were consolidated by the Supreme Court of the State of Washington as aforesaid. Thereafter by opinion of October 10, 1963, and by judgment of November 14, 1963, the Washington Supreme Court reversed the Franklin County Superior Court and affirmed the Grant County Superior Court, thereby directing that both amendatory contracts were to be confirmed. Petitioners' timely Petition For Rehearing (R. 0246) was denied by order of November 4, 1963. (R. 0250).

14. In the proceedings respecting said amendatory contracts which were held in the State Courts, petitioners herein raised the federal question hereinabove stated, by "Demurrer and Answer" filed at

the outset in their respective causes at the Superior Court level. (R. 0049, 0123). The material portions of the respective "Demurrers and Answers" so raising this question are set out in "Appendix E"; the question was thereafter raised before the Supreme Court of the State of Washington by petitioners' Briefs and by oral argument. (R. 0233, 0243).

VI. Reasons For Granting The Writ

There is no decision from this Court which authenticates or supports the conclusion of the Washington court that terms of a reclamation "repayment contract" (in this instance, terms relative to withdrawal of land), which have been "confirmed" by a court of law, pursuant to the requirements of 43 USC 511, may be done away with by amendments which have *not* been so confirmed.

If this conclusion of the Washington court is correct, the Congress achieved no certainty by requiring as it did that "*all*" such repayment contracts be judicially confirmed. Under the Washington decision, provisions of a confirmed repayment contract are as transitory as the parties care to make them and nothing in the substance of such provisions has been judicially confirmed at all.

The result decreed by the Washington court denies significant purpose to clear requirement imposed on the contracting parties by a special statute of the United States. The effect of such denial, on the position of the landowners concerned, is genuinely profound. Thus, if the Washington decision is the finally authoritative expression on the question, such landowners, the third party beneficiaries of the whole arrangement, can no longer regard judicial confirmation of a repayment contract as amounting to a measure of assurance for their individual rights and obligations thereby established; what the courts solemnly confirm, the parties can summarily take away, without further judicial activity of any description.

Petitioners submit that the requirement, under federal law, of judical confirmation for a repayment contract is not essentially meaningless as the Washington court has adjudicated. Rather, petitioners contend, such requirement means, in logical and purposeful operation, that when a repayment contract has been so confirmed, the terms thereof are fixed and rendered certain, pending further order of the originally confirming court.

Petitioners submit, then, that review of the Washington judgment is in order so that the relationship

of 43 USC 511 to individual rights, established by the terms of a judicially "confirmed" repayment contract, may be authoritatively determined and established.

SUMMARY AND CONCLUSIONS

1. In 1945, Columbia Basin Project landowners, in statutory elections, voted for repayment contracts between their State Irrigation Districts and the United States; these repayment contracts included provision for withdrawal of lands from such Districts by such landowners under defined circumstances.

2. Such provision relative to withdrawal of lands was confirmed by judgments of the proper courts of the State of Washington in accordance with the clear requirement of 43 USC 511.

3. Thereafter, in 1951, *without further reference to the landowners or to the courts*, officials of the respective Irrigation Districts and officials of the United States summarily amended the judicially-confirmed contracts so as to vitiate the provision for withdrawal of land.

4. By the opinion and judgment of the Supreme Court of the State of Washington for which review is hereby sought, the amendments abrogating the right

to withdraw land were operative when made, although *they were not then, or ever, approved by the landowner-electors or confirmed by any court.*

5. The foregoing facts and circumstances pose a substantial and important legal question of grave concern to such landowners which has not been heretofore answered by this Court, *i. e.*, does 43 USC 511 contemplate that a repayment contract "confirmed" by a court of competent jurisdiction may be summarily altered and revised without further reference to such court?

6. Under the foregoing circumstances and for the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FLORENCE MAYNE MERRICK
DAVID E. WILLIAMS
Counsel for Petitioners

DATED: February 10, 1964.

Appendix A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF GRANT

NO. 14298

In the Matter of the Petition of Earl S. Gregory, Melvin C. Stepon, Edward W. Ker, Earnest W. Heinrich, and Raymond A. Whitlow, constituting the Board of Directors of the QUINCY COLUMBIA BASIN IRRIGATION DISTRICT

for the

JUDICIAL EXAMINATION, APPROVAL AND CONFIRMATION

of the proceedings had by the Quincy-Columbia Basin Irrigation District and by or under the direction of the District Board in the calling, noticing, conducting and canvassing of a Special Election held in the District on the proposition as to whether the District should enter into an Amendatory Contract with the United States of America, approved by the Secretary of the Interior on the 22nd day of January, 1962, and other proceedings connected therewith and incidental thereto; and

for the

JUDICIAL CONSIDERATION AND DETERMINATION

as to whether the said Amendatory Contract is one within the authority of the District to undertake and carry out.

MEMORANDUM DECISION

After hearing on the above-entitled matter, the Court has received and has thoroughly reviewed the written arguments, in Brief form, of counsel for both parties herein. The written arguments submitted by both parties was detailed, very complete, and excellently prepared.

At the conclusion of Mr. Williams' Brief, as attorney for the defendant herein, he sets forth six separate reasons why he contends that the Amendatory Contract between the United States of America and the Quincy-Columbia Basin Irrigation District of October 2, 1962, should not be confirmed.

I propose to now list the defendant's objections as stated in his written argument and then discuss them individually and give the Court's conclusions as reached thereon.

Defendant's objections are as follows:

1. The notice of election relating thereto failed to give landowners the prescribed and fixed opportunity to withdraw from the District pursuant to the clear requirements and contemplation of State and Federal law.

2. Any decree confirming the said "amendatory contract" would not make such "contract" binding on the United States because the two other districts have not entered into a similar agreement. This court should not confirm a contract which is not a contract and which may never become a contract unless third parties, not before the court, exercise their legitimate discretion in a certain way.

3. The 'amendatory contract" was integrated with and negotiated in consideration of an additional and non-authorized and extra-statutory agreement between the parties to seek changes in Federal law. This agreement was implemented by and produced illegal lobbying activity by the District.

4. The "amendatory contract" by Article 11 thereof, is too vague, indefinite and inconclusive to amount to a confirmable contract.

5. The District officials significantly mislead the electors by official communications prior to the election.

6. This court is asked, in clear effect, to decree discrimination with respect to repayment costs among landowners on one Federal reclamation project.

At the conclusion of the above set forth objections, counsel for the defendant makes the following statement:

"Defendant is frank to say that his primary reliance is upon points 1 and 2 of this Summary, although he also seriously urges the validity of the other objections detailed herein."

I.

In reference to defendant's objection number 1, it should first be pointed out that both in the provisions of the State and Federal law pertaining to the giving of landowners an opportunity to withdraw from the District, such provisions are permissive and not mandatory, the word "may" being used throughout both statutory sources, rather than the words "shall" or "must." However, once such a provision is included in the contract, it becomes mandatory upon the plaintiff District to insert in any proposed notice of election the date limiting the time of such notice of land withdrawal. See R.C.W. 89.12.050 and 16 U.S.C.A. 835a (e) (ii).

No such time limit for land withdrawal was included in the notice of election in the matter before the Court, and it now becomes the question of whether

such an inclusion was necessary, before this Court can approve the notice of election in this confirmation proceeding.

The original 1945 repayment contract contains such a provision of the right of land withdrawal in Article 40 of said contract. However, the fact that the 1945 contract contains such a provision does not mean, in the opinion of this Court, that it is unchangeable by future amendments thereto by the parties to the contract, first on the basis of contractual rights of parties, and secondly, because of the opinion of this Court that the land withdrawal feature was peculiarly applicable in the beginning, to the 1945 contract.

In addition, it should be pointed out that even the defendant, in his demurrer and answer, paragraph II (c), admits that the 1945 repayment contract *as duly amended* is the present binding repayment contract between the District and the United States.

By the Act of September 26, 1950 (64 Stat. 1037) the Columbia Basin Project Act was amended in order to allow land withdrawn from the District pusuant to Article 40 of the 1945 repayment contract to be brought back into the District in private ownership and receive water. The pertinent law of the State of

Washington was also amended in accordance therewith.

In accordance with this change in the Federal and State law, an amendatory contract was submitted to the District on July 19,1951. This proposed amendatory contract contained the following Article:

> "4. Article 40 of Contract No. Ilr-1443 is hereby *amended* to read as follows:
>
> "Delivery of Water to Lands Formerly Withdrawn.
>
> "'40. Lands withdrawn from the District prior to the election in July 1945, in compliance with the provisions of subsection 5 (d) of Chapter 275 of the Laws of Washington, 1943, but brought back within the operation of the District shall, if otherwise eligible to receive water from, through, or by means of the irrigation system, be eligible thereto only when made subject to a recordable contract executed pursuant to the provisions of the Columbia Basin Project Act (57 Stat. 14) as amended by the Act of September 26, 1950 (Public Law 840, 81st Cong., 2d Sess.), and Chapter 275 of the Laws of Washington, 1943, as amended by Chapter 200 of the Laws of Washington, 1951.'"

This contract was entered into on August 7, 1951, and in the opinion of this Court, the 1945 repayment

contract between the United States and the Quincy District was thereby, and still is, amended in accordance therewith, and the Article as amended is the only pertinent Article as far as this case is concerned, relating to withdrawn land or notice to be given in connection therewith; and this is true even though the statutory provisions relating thereto were not repealed.

In addition, it is of pertinent importance to this Court that the defendant herein while on the witness stand gave no testimony whatsovere that he was adversely affected by any manner or means by the failure, in this matter before the Court, to have the opportunity to withdraw his land. Further, he did not testify or give this Court any indication whatsoever that he would have withdrawn his land from the District had he had the opportunity to do so. Not having testified in this regard, and keeping in mind that he was allowed to come in as a defendant after all the defendant's pleadings had been drawn for another party who was later dismissed as a party to this action, the Court can only come to the conclusion that the remaining defendant herein was not affected adversely in any manner by the elimination of this particular element from the notice of election, even if this

Court had not come to the conclusion as set forth above.

This Court, therefore, is of the opinion that defendant's objection number 1 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

II.

In reference to defendant's objection number 2. Article 42 of the 1945 repayment contract provided, in effect, that each one of the Districts in the Columbia Basin Project had to have a separate binding contract with the United States of America before any one of the three contracts was effective. This was a necessary element of the contracts in 1945 because of the inter-relationship of the Districts project-wide in some respects in connection with the O. and M. costs and construction costs based on the irrigable area and the land classifications in each of the three districts.

In the present Amendatory Contract before the Court, this provision was not eliminated from said Amendatory Contract, but was in a general, all-inclusive way retained by Article 12 of the Amendatory Contract before the Court, which provides: "Except as expressly modified herein, Contract No. Ilr-1443 shall be and remain in full force and effect."

The Amendatory Contract before the Court at this time, in Article 13 thereof entitled "Confirmation and Effective Date of Amendatory Contract," sets forth a very specific period in the transactions when this contract will become effective between the parties thereto.

There would then seemingly appear to be a conflict as to the effective date of this Amendatory Contract between the more general contract provision of the 1945 contract, having to do with situations then pertinent, and Article 13 of this Amendatory Contract before the Court, which is specific and pertinent, this Court believes, to the contract under consideration.

This Court uses the word "pertinent" advisedly, remembering the undisputed testimony before the Court at the time of the hearing of Mr. Rollins that there would be no impact upon the other two districts if the Quincy District accepted this Amendatory Contract under consideration. The other two districts may either accept a similar amendatory contract with the United States of America or they may continue to operate under the 1945 contract.

It is the opinion of this Court that where there is a conflict in a contract—one of a general nature referring to circumstances existing in 1945 and, according

to the testimony in this hearing, not existing at this time, and a provision which is specific and pertinent --that the specific and pertinent provision must prevail as the intention of the parties.

Therefore, it is the opinion of the Court that defendant's objection number 2 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

III.

In reference to defendant's objection number 3, the Court would like to quote from plaintiff's Brief and adopt such quotation as its own.

"As a preliminary observation, it is common knowledge that a contract is not regarded as being chiseled on granite, but is one that is constantly subject to change with the mutual assent of the parties. Therefore, if a municipal corporation has a contract with the United States, it seems clear that such contract may be amended to reflect the mutual desires of both parties. Such amendment, of course, presupposes that both parties must be able to negotiate, the one with the other. This is what the District has done, and it is submitted that this action is such a necessary result from the con-

tractual relation that it could not logically be classed as illegal."

This power to negotiate with the United States for an amendatory contract is set forth in the National Reclamation laws. See Section 3 of the 1939 Reclamation Project Act (43 U.S.C. 485b) and Section 7a of the 1939 Act (43 U.S.C. Sec. 485f). See also, R.C.W. 87.03.040.

In addition, the original Reclamation Act of 1902 (43 U.S.C. 371, et seq.) provides that the Secretary of the Interior *as the agent of Congress* shall carry out the acts of negotiation, among others. Therefore, as plaintiff alleges, "it seems clear that if the District could deal with the Secretary as agent, it could also deal with Congress as principal." The Court is thoroughly in accord with that statement.

The officers of the District did negotiate with the agent and the principal, namely, the Secretary of the Interior and Congress, in connection with this Amendatory Contract under consideration. Certainly, the officers of the District negotiated for changes in the law commonly referred to in the hearing as "fringe benefits," and it was the unanimous opinion of all witnesses, including those produced by the defendant,

that these fringe benefits would bring about nothing but an extremely beneficial situation for the water users in the district. In the opinion of this Court, the officers of the District not only had the right but indeed the obligation to carry on such negotiations.

More by indirection than anything else, it was attempted to show that the officers of the District were committing some kind of criminal or improper act in necessary negotiations under the label of "lobbying." With this contention this Court definitely does not agree. See 12 AmJur., Sec. 203. Steele v. Drummond, 275 U.S. 199, 72 L.ed. 238. State ex rel Hunt v. Okanogan County, 153 Wash. 399. See also, Restatement of Contracts, Section 559, Comments (a) and (b).

The latter reference above provides in part:

"(a) . . . It is the practice for individual congressmen to receive in their offices persons interested in promoting legislation, and to hear their arguments. On these arguments the question may depend whether a committee will give a hearing on a bill.

"(b) . . . The evil to be guarded against in bargains for lobbying is not so much the solicitation of the votes of the individual legislator *as doing so in return for payment or a promise of payment* . . ."

In the evidence in this case there is not one shred of evidence, or any evidential intimation thereof, that the officers of the District used any improper means whatsoever to influence the agent, Director, or the principal, Congress.

This Court is of the opinion that defendant's objection number 3 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

IV.

In reference to defendant's objection number 4 pertaining to Article 11 of the Amendatory Contract under consideration. The Court is of the opinion that Article 11 is as definite and conclusive in its wordage as such an article can be and that the subject matter of Article 11 is properly a part of the Amendatory Contract, both as to so-called "fringe benefits" contained in the Secretary's report of August 31, 1961, entitled "Framework for Solution of Repayment Problems, Columbia Basin Project, Washington" and also as to the mutual taking advantage of "any other significant changes in the general policies of the United States with respect to the project or in the Federal statutes applicable thereto."

In this connection the Court would again quote from plaintiff's Brief and adopt said quotation as its own.

"It should be pointed out that no witness testified that he did not have an opportunity to determine the contents of the Secretary's Report. Nor is there any evidence of record that any one objected, prior to the election, of lack of knowledge of any contract details nor of any other defect or objection complained of by the defendant in his Brief or at the trial. On the contrary, the evidence was to the effect that there was general knowledge of the subject matter, and the defendant himself admitted attending various meetings and being active in the Landowner's Association group which was militantly opposed to the proposition."

Therefore, this Court is of the opinion that defendant's objection number 4 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

V.

In reference to defendant's objection number 5. In this connection the Court desires to quote from 43 Am. Jur. Public Securities and Obligations, Section 78, as follows:

"Duty of courts to uphold bond elections wherever possible. The general rules of election law are to the effect that presumptions are in favor of the legality and regularity of the proceedings had and conducted, and the votes and ballots cast. In accordance with such principles, and in furtherance of a general public policy, it has been held that courts must, as a rule, wherever possible, uphold the validity of municipal bond elections, unless clear grounds for invalidating them are shown."

The Court further quotes from 1 Dillon, on Municipal Corporations, Section 213:

"Inducements in the way of statements and representations made to influence a voter, *although false and fraudulent*, will not invalidate the election if it does not appear that by force and fraud the voter was compelled to vote in a way he did not desire to vote."

In connection with the latter reference, the defendant herein cannot truthfully claim that he was mislead by any statements, written or otherwise, made by the District officials because he testified that he is one of the plaintiffs in a civil law suit filed previous to the election which was brought with the purpose in mind

of recovering the alleged illegal drainage charges which are an integral part of the matter before this Court. Indeed, the defendant himself did not complain of being mislead by any such statements while he was on the witness stand.

The Court is of the opinion that the defendant was not mislead and had an opportunity to vote in the way he wished, to vote free from any "force and fraud."

The District through its officers gave the electors the benefit of its opinion on the pertinent matters before the electors in the election held. This the officers of the District had not only the right but indeed the duty to do. The Court finds no element of 'force and fraud" or of misleading the electors in any statement now in evidence before this Court.

Therefore, this Court is of the opinion that defendant's objection number 5 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

VI.

In reference to defendant's objection number 6. This Court has in substantial effect expressed its opinion in reference to objection number 6 in dis-

cussing objection number 2. It is the opinion of this Court that the United States of America has the contractual right to enter into a contract separately with he Quincy District as compared to the other two districts in the project. This is not "discrimination," as the other two districts have the right to enter into a similar amendatory contract with the United States of America or to continue to proceed, if they wish, under the 1945 contract.

The Court, therefore, is of the opinion that defendant's objection number 6 is not legally sound and is not a basis for the non-confirmation of this Amendatory Contract.

No legitimate objections to this Amendatory Contract or to the notice of election given having been submitted to this Court by the evidence of the defendant herein, it is the opinion of this Court that the notice of election should be and is hereby approved, and that the Amendatory Contract hereinunder consideration between the United States of America and the Quincy-Columbia Basin Irrigation District should be and is hereby confirmed.

DATED this 30th day of November, 1962.

LAWRENCE LEAHY, Judge

Appendix B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR FRANKLIN COUNTY

No. 11517 — Memorandum Decision

In the Matter of the Petition of the Board of Directors of the South Columbia Basin Irrigation District

for the

JUDICIAL EXAMINATION, APPROVAL, and CONFIRMATION

of

the proceedings had by the South Columbia Basin Irrigation District and by or under the direction of the District Board in the calling, noticing, conducting and canvassing of a Special Election held in the District on the proposition as to whether the District should enter into an Amendatory Contract with the United States of America, approved by the Secretary of the Interior and other proceedings connected therewith, and incidental thereto; and

for the

JUDICIAL CONSIDERATION AND DETERMINATION

as to whether the said Amendatory Contract is one within the authority of the District to undertake and carry out.

THIS MATTER was presented to the Court by proper Petition, under the proceedings required by Federal

law, 43 USCA 511, which requires that a court of competent jurisdiction confirm contracts such as the one here involved as a condition precedent to the execution of said contract by the United States. The jurisdiction of this Court to hear the proceedings is authorized by RCW 87.03.780.

The intervenors intervene under the litigant status given them by the provision of 87.03.795. The petitioners do not deny the jurisdiction of this Court to entertain the answer of the intervenors.

The Petition was supported by numerous exhibits, testimony, and an excellent brief of points and authorities. The intervenors participated by appearance and examination at the hearing, and also presented a very thorough brief in support of their previously filed demurrer and answer. The intervenors rely in this proceeding on the following points:

POINT ONE — RIGHT OF FARMERS TO WITHDRAW FROM DISTRICT PRIOR TO ELECTION

It is urged that this Court should deny the Petition for Confirmation of subject contract because of an alleged substantial irregularity in the proceedings conducted pursuant to Chapter 275 of the Laws of 1943. They contend (and the petitioners do not deny) that petitioners, South Columbia Basin Irrigation

District, failed to give the written notice of the fixing of a final date for withdrawal of lands as prescribed by Sub-Sec. 5 (d) of Chap. 275, Laws of 1943. The intervenors contend that said omission constitutes a denial of a substantive right to themselves and others in like position. This Court finds, from the evidence, that the District did not comply with the required Notice provision of subject statute, and it remains to be determined whether such failure constitutes a substantial and effective barrier to confirmation of the contract that resulted from an election which was conducted without such procedural compliance.

POINT TWO — AMENDATORY CONTRACT NOT BINDING ON THE UNITED STATES

The intervenors advanced the further contention that the U. S. Government cannot be bound to its contract by means of the procedure which has been followed, and that this Court should not confirm a contract which is dependent for its efficacy on the possibility of its future execution and fulfillment of conditions precedent which are not certain of accomplishment. In other words, intervenors complain that the U. S. Government is barred by Article 42 of the original 1945 Repayment Contract between the parties from entering into the proposed contract, and could escape the binding effect of the contract and its confirmation,

because of the failure of either one of the other two—the irrigation districts—to obtain similar contracts and confirmation of the same. The intervenors contend and the petitioners do not deny that this Court has no way of knowing whether the other districts have executed and obtained the confirmation of "similar separate contracts."

POINT ONE — RIGHT OF FARMERS TO WITHDRAW FROM DISTRICT PRIOR TO ELECTION

After complete review of all evidence and authorities, it appears that this Court is asked to declare that a contractual provision and the clear legislative mandates of our State Legislature and the U. S. Congress (RCW 89.12.050 and 16. USCA 835 et seq.) have deteriorated from what were once recognized as substantive provisions to the status of mere procedural steps which are now magnus nugas. This Court is informed, without evidence of substantial nature to support the allegation, that the consideration which led the Washington State legislature to afford an opportunity for withdrawal of lands from the Columbia Basin Development has failed, by reason of the progress of the Project to a point where the withdrawal would be purposeless.

It is the view of this Court that it is not required nor empowered to relegate the statutory requirement of

R.C.W. 89.12.050 to the status of an elective procedure. The right of the landowner to be given notice of a time period in which he might withdraw his lands was treated as a substantive right on the previous occasion when these statutory procedures were used in dealing with the other contracting parties.

The Congress of the United States in adopting 64 Stat. 10.37, and the Legislature of the State of Washington, by its enactment of Chapter 200 Laws of 1951, reaffirmed the importance of the withdrawal provision. It was for those legislative bodies then or later to announce that the applicability of the withdrawal procedure was limited to a single project developmental phase. It is not now proper for this Court to usurp the legislative prerogative and effectively declare a substantive statutory requirement to have lost its effect, as if it were akin to a reciprocal negative easement which has failed because of changed conditions or "non-user."

To say that there has been no showing of intent to withdraw, or a present or past apparent feasibility of withdrawal of lands is to beg the precedental question.

Once having decided that the statutory requirement of notice of withdrawal opportunity is substantive in nature, the Court then defers to the legislature to de-

termine whether the applicable law should continue in effect. In view of the inherent powers and meritorious limitations flowing from separation of legislative and judicial functions, we are compelled to assume that there are just reasons for, and available means to accomplish withdrawal of land from this strife-torn Federal project.

Counsel for the petitioners have urged that we should consider the holding of *In Re the Petition of Columbia Irrigation District*, 183 Wash. 425, as binding on this latter point, but we don't believe that the Supreme Court was faced with the same or a similar issue in that case. This Court believes that it would be a useless and wholly improper act to question either the feasibility of withdrawal or the intent or lack of intent on the part of the intervenors to exercise the withdrawal procedure. The motivation of the intervenors is a matter to be considered by legislative bodies rather than courts in a case where the intervenors are given a clear substantive right. The legislative bodies are well-armed with committees to weigh and apply the current reasons or lack of reasons for the continued existence of such statutory requirements.

CONCLUSION

In view of the foregoing, it must be concluded that a substantial right to the protestants has been denied, and that the contract flowing from the defective proceedings cannot be confirmed.

POINT TWO — AMENDATORY CONTRACT NOT BINDING ON THE UNITED STATES

In view of its foregoing determination, this Court is not compelled to decide the remaining point, which is seriously urged by the intervenors. It would seem, however, that repetitive appeals might be avoided by an affirmative determination of all issues. Accordingly, it would be the finding of this court that the failure of the petitioners to show compliance with Article 42 of the 1945 Repayment Contract (as confirmed by Article 12 of the Amendatory contract) deprives them (the Petitioners) of the privilege of obtaining confirmation of the instant contract.

Despite the testimony of District and Bureau representatives to the effect that the requirement of concurrent similar contracts is not now applicable to the existing facts, there is no ambiguity or other *legal excuse* for this Court to reform an earlier contract of the parties (which remains in effect) by overlooking a condition precedent of undeniable purpose and clarity.

That the Federal agency (Bureau of Reclamation) may have used the requirement of conformity to its benefit in inducing the farmers from widely differing areas and with widely differing development and drainage costs, to either accept pro rated contractual repayment provisions in order to liquidate the results of gross error in drainage planning is implicit in the testimony of the Project Manager, Mr. Rawlings. For such importance as it may have, it is the view of this Court that the Bureau of Reclamation, both as a contracting party under the earlier contract, and a negotiating party under the proposed contract, has had the benefit and use of this provision which was peculiarly for its benefit. To say that accelerated payments under the administrative machinery of "Operation and Maintenance" charges would have served the same purpose of compelling the disillusioned landowners to accept the amended contract, or to say that the farmers had a right to reject conformity, does not obviate the fact that Article 42 was of material negotiating and administrative benefit to the Bureau of Reclamation. The Court doesn't need to take judicial or actual notice of these well-known facts, but can find in the testimony of the parties at the hearing that the farmers were compelled to accept the conformity provisions or be immediately subjected

to the burden of accelerated Operation and Maintenance charges.

Whether the Bureau of Reclamation relied on Article 42, and has gained partial performance, or whether it has simply sat on its hands through renegotiating and legislative proceedings over a period of seventeen years does not really matter, except to apprize this Court of the obvious fact that the Bureau should not now be heard to say that, because of the lateness of the hour, this provision of unusual complexity and obvious import should be treated a fortiori as diminimus. The clear facts remain that, as a Federal agency, the Bureau of Reclamation entered into a contract which limited its authority to contract, and imposed both conditions precedent and subsequent, which are peculiarly within the power of the Federal sovereign, to latently accept or reject.

The authorities uniformly support the premise that the Bureau, in such a case as this, could not be forced by this Court to perform its contract with the South District, if it determined, after confirmation by this Court, to fall back on its obvious lack of authority to waive Article 42.

It goes without saying that the Attorney General of the United States, the Bureau of Budget, the General

Accounting office, the U. S. Congress, and the Federal Courts (on petition) are charged with the duty and authority to intervene if it appears that such a Federal Agency has overstepped the authority of the contract to the financial detriment of the taxpayers. Such intervention is not a remote possibility, but a very real probability.

Under the undisputed facts of this case, the Federal agency purports to give a long term non-interest-bearing debt liquidation contract to individuals (through their districts), who could otherwise be compelled to liquidate their debts through shorter term interest-bearing Operation and Maintenance payments. With or without the interest factors, a benefit has been sacrificed by the United States government, and if this waiver meets with disapproval of interested Federal agencies, the best intentions of the contracting parties and the Order of this Court would be moot and ineffectual.

For the reasons above stated, this Court declines to approve the contract and confirm a procedure which appears on its face to be a regrettable invitation to further litigation, and to hold out further periods of uncertainty for those in government and on the farms,

who are entitled to the certainty that can come only through early legislative relief.

Done by the Court this 21st day of March, 1963.

JOHN THOMAS DAY, Judge

Appendix C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 37113 — Department Two

In the Matter of the Petition of the Board of Directors of the QUINCY COLUMBIA BASIN IRRIGATION DISTRICT

and

In The Matter of the Petition of the Board of Directors of the SOUTH COLUMBIA BASIN IRRIGATION DISTRICT

for the

Judicial Examination, Approval and Confirmation of Amendatory Repayment Contracts

MURRAY, J. — These consolidated appeals arise from a special statutory proceeding seeking the confirmation of amendatory repayment contracts between two irrigation districts and the United States.

Judge Murray is serving as a judge pro tempore of the Supreme Court pursuant to Art. 4, § 2(a) (amendment 38), state constitution.

The two districts are the Quincy Columbia Basin Irrigation District in Grant County, herein called the Quincy District (cause No. 37003), and the South Columbia Basin Irrigation District in Franklin County, herein called the South District (cause No. 37113).

The amendatory repayment contracts involved here are quite similar, but each is separate, and each speaks only for its district. For a clear view of the problems presented, it is necessary to detail some of the statutes, contract provisions and events leading up to the present controversy. In 1945, these districts made identical contracts (except as to maximum construction costs) with the United States covering repayment of contemplated irrigation and drainage[1] costs. In these contracts, the United States agreed to expend $280,782,180 for the construction of irrigation and drainage facilities on the entire Columbia Basin Project, with a limit of $8,176,000 to be spent on drainage facilities. When the limit of $8,176,000 had been reached for drainage, the cost of drainage works built thereafter would be charged each year to operation and maintenance in each district.

In 1959, the districts were advised by the United States that limitation on drainage expenditures had been reached and thereafter such cost would be

charged to operation and maintenance in each district. Such charges were made and the districts paid them for 1960 and 1961. The drainage charges for 1962 were not paid because of a deferment authorized by joint resolution of Congress on August 30, 1961 (75 Stat. 408).

After being notified of the exhaustion of drainage funds, the districts and the United States began negotiations for amendatory contracts changing the terms of repayment to avoid excessive costs resulting from charging drainage costs to operation and maintenance. On August 31, 1961, the Secretary of the Interior submitted a report, "Framework for Solution of Repayment Problems, Columbia Basin Project, Washington."

The Quincy District then prepared an amendatory contract which was approved on February 13, 1962, by a vote of 2263 for and 297 against. A similar contract was approved in the South District on January 15, 1963, by a vote of 1204 for and 544 against.

On October 1, 1962, the Congress passed an act (76 Stat. 677) which approved and authorized the Secre-

1 Columbia Basin Irrigation Project is made up of three districts, but only two are involved in these appeals. The other is the East Columbia Basin Irrigation Project in Adams County. Where mentioned herein it is called East District.

tary of the Interior to execute the contract with the Quincy District which had been approved by the electors February 13, 1962, *and further authorized the Secretary of the Interior to execute substantially similar contracts with the South District and the East District* (Adams County).

The amendatory repayment contracts now before the court, in Article 13 of the Quincy District and in Article 14 of the South District, provide that the contract in each case will not be binding on the United States until decreed to be a valid contract by the proper court of the state of Washington.

The districts have presented their respective contracts to the proper courts. The Quincy District (Grant County) contract was approved. The South District (Franklin County) contract was not approved. Appeals have been taken from both judgments.

The appellants in both cases primarily rely upon the following points: (1) the right of farmers to withdraw from district prior to election, and the necessity of notice thereof, and (2) the amendatory contracts are not binding on the United States because the contracts with other districts are not yet approved. The other points raised will be discussed later.

This is a special statutory proceeding wherein the districts seek court approval of the amendatory contracts. RCW 87.03.780 provides:

"The board of directors of an irrigation district . . . may commence a special proceeding in and by which . . . the proceedings of said board and of said district providing for . . . any contract made or entered into .... for the payment of moneys to the United States . . . may be judically examined, approved and confirmed."

Those opposing the confirmation of the contracts, one individual landowner in cause No. 37003 and seven individual landowners in cause No. 37113, will be referred to as landowners. Their authority to contest the proceedings is found in RCW 87.03.795.

The jurisdiction of the court is set forth in RCW 87.03.800:

"Upon the hearing of such special proceedings, the court shall have full power and jurisdiction to examine and determine the legality and validity of and approve and confirm . . . all proceedings which may affect the authorization or validity of the contract with the United States . . . The court in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings, in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings . . ."

The only procedural step complained of by the landowners was that the notice of any opportunity to withdraw was not given them by the districts in the official notices of the elections. In cause No. 37003, the court held the notice was not mandatory, and in cause No. 37113, that it was mandatory.

At the time of the 1945 contracts, Laws of 1943, chapter 275, § 5, p. 862, RCW 89.12.050 (4), and 16 U.S.C.A. § 835a (e) (ii), provided that each district repayment contract may include:

"... Without compliance with other provisions of state law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before such date fixed by such board between a date ten days after the official notice of the election on the repayment contract between the United States and the district and the date of such election. The date limiting the time of such filing shall be announced in the official notice of the proposed election, and lands for which such notice is filed shall be deemed excluded from the district for all purposes as of the time of such filing . . ."

Sections 40(a) and 40(b) of the contracts of 1945, in compliance with Laws of 1943, chapter 275, § 5(d), p. 862, *supra*, were as follows:

"40(a). Lands within the District prior to the District election with respect to this contract may be

withdrawn therefrom on compliance with the provisions of subsection 5(d) of Chapter 275 of the Laws of Washington, 1943.

"40(b). Lands so withdrawn shall not be entitled thereafter to receive water from, through or by means of the irrigation system so long as they remain in private ownership."

At the time of the execution of the 1945 contracts, the federal government contemplated the expenditure of $280,782,180 on the Columbia Basin Irrigation project. No irrigation facilities had then been constructed. It was necessary at that time to ascertain the approximate areas to be included before the expenditures were made. The project contemplated irrigation of 1,029,000 acres. Those landowners who did not want irrigation and others whose land was not suitable were given an opportunity to withdraw.

There were several reasons why landowners who so desired should be given the opportunity to stay out of the project, because those who wanted to remain in had to submit to a number of burdensome limitations (Laws of 1943, chapter 275, 16 U.S.C.A. § 835a), some of which were as follows:

(1) There must be agreements between United States and the district providing for payment of the cost as proportioned by the Secretary of the Interior.

(2) Farm unit must be not more than 160 acres or less than 10 acres, and any acreage above 160 would be excess. (3) Within six months after execution of contract between United States and the district, the landowner must enter into a recordable contract containing substantially the limitations and requirements above mentioned; further agree that excess lands could be sold at an appraised value set by the Secretary of the Interior; and, further, that if the owner sold the irrigated unit, it would be at the appraised value and he would file an affidavit to that effect with the auditor.

The penalty for noncompliance was that no water would be delivered to the property.

Later the laws, both state and federal, were amended to permit the excluded lands to come back into the districts. (Public Law 840, 81st Congress, 2d session, and Laws of 1951, chapter 200). The districts and the United States thereupon, in 1951, amended Article 40 of the 1945 contracts as follows:

"4 Article 40 of Contract No. . . .[2] is hereby amended to read as follows:

" '*Delivery of Water to Lands Formerly Withdrawn*

" '40. Lands withdrawn from the District prior to

[2] Quincy District contract was No. Ilr-1443. South District was No. Ilr-1444.

the election in July 1945, in compliance with the provisions of subsection 5(d) of chapter 275 of the Laws of Washington, 1943, but brought back within the operation of the District shall, if otherwise eligible to receive water from, through or by means of the irrigation system, be eligible thereto only when made subject to a recordable contract executed pursuant to the provisions of the Columbia Basin Project Act (57 Stat. 14) as amended by the Act of September 26, 1950 (Public Law 840, 81st Cong., 2d Sess.), and chapter 275 of the Laws of Washington, 1943, as amended by chapter 200 of the Laws of Washington, 1951.'"

It will be noted that this amendment eliminated the withdrawal provision formerly contained in § 40(a) of 1945 contracts.

Upon receipt of notice of the exhaustion of the $8,176,000 drainage fund, the districts and the United States negotiated repayment contracts to avoid the excessive annual operation and maintenance charges for drainage construction. These contracts made no provision for withdrawal of any land. The notices of elections in the respective districts gave no notice of time in which withdrawals of land could be made as provided in RCW 89.12.050 (4), supra, and 16 U.S.C.A. 835a (e) (ii), *supra*.

However, on October 1, 1962, the Congress in 76 Stat. 677 [3] approved, and authorized the Secretary of the Interior to execute, the Quincy District contract which received voter approval on February 13, 1962, and he was further authorized to negotiate and execute on behalf of the United States amendatory repayment contracts in substantially the same form and same provisions with the South and East Columbia Basin Irrigation Districts. This same act repealed the withdrawal provision of the Columbia Basin Project Act of March 10, 1943 (57 Stat. 14). On February 3, 1963, Laws of 1963, chapter 3, the legislature eliminated the right of withdrawal.

The acts of the parties to the contracts in eliminating the withdrawal provisions and later the acts of Congress and the legislature confirming those steps were indicative of the meaning of the statutes, and the rights existing or arising thereunder. That is, in the

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3 *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the amendatory repayment contract with the Quincy Columbia Basin Irrigation District negotiated by the Secretary of the Interior, pursuant to subsection (a) of section 7 of the Reclamation Project Act of 1939 (53 Stat. 1192; 43 U.S.C. 485f), which contract was approved by the district electors on February 13, 1962, is hereby approved and the Secretary is hereby authorized to execute it on behalf of the United States and to negotiate and execute on behalf of the United States amendatory repayment contracts in substantially the same form or amendatory repayment contracts containing substantially the same provisions with the South and East Columbia Basin Irrigation Districts."

different districts as they were created, the landowners had a time and right to withdraw. In the 1945 contracts, the United States agreed to spend $280,782,180 on the project. The Quincy District agreed to repay a maximum of $24,900,000 as its share. The South District agreed to pay a maximum of $33,700,000. These items became general obligations of the respective districts and all the lands therein became and remained bound to pay those amounts. *State ex rel. Wells v. Hartung*, 150 Wash. 590, 274 Pac. 181 (1929); *Van Hollebeke v. Wheeler*, 55 Idaho 268, 41 P. (2d) 603 (1935); 16 U.S.C.A. § 835a (ii); RCW 87.03.215.

To permit landowners to withdraw their property and avoid payment after a large debt was incurred against it would be unusual procedure and could mean financial disaster to the district. If some withdrew, the debt would have to be borne by those remaining. By that procedure, the United States could be deprived of the amounts due under the repayment contract without its consent.

If the right to withdraw was vested and unchangeable, then it is illogical that the United States would ever agree to amendatory contracts alleviating the plight of the respective districts. If the landowners

could withdraw at will, an amendatory contract eliminating the obligation against the lands would be unnecessary. In summary, we find the situation to be as follows: The 1945 contracts provided for the withdrawal; 1951 contracts, as amended, eliminated the right; the contracts now under consideration further eliminated it; and, finally, the statutes, 76 Stat. 677, *supra*, and Laws of 1963, chapter 3, *supra*, have eliminated the withdrawal provision.

This court, in *In re Horse Heaven Irrigation District*, 11 Wn. (2d) 218, 226, 118 P. (2d) 972 (1941 in discussing the construction of a statute said:

"It is a rule of such universal application as to need no citation of sustaining authority that no construction should be given to a statute which leads to gross injustice or absurdity."

We conclude that the right to withdraw lands from the district was a limited one and the time has elapsed as to these particular landowners and the districts here involved. Having so concluded, it is not necessary to discuss the question of whether notice to withdraw was given.

Now we will consider the second objection to the contracts, namely, that the other districts have not had similar contracts approved by the courts.

Section 41 of the 1945 contracts provided as follows:

"This contract shall not be binding on the United States until (1) there have been obtained the final judgments and decrees as required by article 42 and (2) similar, separate contracts between the United States and the East Columbia Basin Irrigation District and the South Columbia Basin Irrigation District have been duly executed and likewise confirmed in appropriate court proceedings."

The contracts now before the court (Article 13 of the Quincy District contract and Article 14 of the South District contract) contain the following identical provisions:

"The execution of this amendatory contract shall be authorized or ratified by the qualified electors of the District at an election held for that purpose. The District, after the election and upon the execution of this amendatory contract, shall promptly secure a final decree of the proper court of the State of Washington approving and confirming this amendatory contract and decreeing and adjudging it to be a lawful, valid, and binding general obligation of the District. The District shall furnish to the United States certified copies of such decree and of all pertinent supporting records. This amendatory contract shall not become effective or be binding on the United States until the final decree required herein has been obtained."

Article 41 of 1945 contracts required similar contracts and court approval in all districts before the

United States became bound. Those contracts have been in effect for more than 15 years and there is no reason to change them.

The new contracts have not expressly amended Article 41 of the earlier contracts but Articles 13 and 14, respectively, do, in effect, amend or modify it. The present contracts provide their own effective dates and agree that the United States will be bound as each contract is approved by the court.

This is understandable because, in 1945, the United States contemplated the expenditure of $280,782,180. No construction work had been done. The program included all three districts in the Columbia Basin Project. The facilities were to be joint. The United States wanted contracts from all three districts to be effective before the work started and before it was bound.

That is not the present situation. The contracts now before the court do not involve joint facilities. Each contract is separate and in no way affects any other district, and the United States has agreed to be bound as each contract receives court approval.

Such provisions are in accord with Report No. 2002 of the Committee on Interior and Insular Affairs

made to the 87th Congress, 2d session, which contains the following:

"In summary, the proposed contract will provide for continuation of a workable project wide operation of the Columbia Basin Project irrespective of action or inaction on the part of one or both of the remaining two districts to amend their existing contracts. The proposed amendments are in full accord with the proposals and recommendations of the Secretary's framework report."

The Congress acted upon the report and passed Public Law 87-728, 76 Stat. 677, heretofore quoted, wherein the Quincy District contract was approved and the other districts authorized to make similar ones.

We conclude that the court in each district can proceed to consider the amendatory contracts without previous approval in the other districts in the Columbia Basin Project.

In cause No. 37003, Grant County, the appellant, in addition to questions heretofore discussed in this opinion, makes the following additional objections: (1) the public officials did not contract within the law, (2) the Quincy District unlawfully interfered with the special election, (3) the proposed amendatory contract is not a contract because of uncertainty, and

(4) the court erred in making findings of fact 4, 5, 21, 32, 33, 34, 35, and 36.

We have carefully considered these objections and examined the record and find they have no merit. The record discloses no unlawful conduct on the part of the district officers; there is no evidence of their interference in the special election. The objection that the contract is invalid because of uncertainty is based upon Article 11 of the amendatory contract which provides:

"... If, subsequent to the date of this contract, there are any other significant changes in the general policies of the United States with respect to the project or in the Federal statutes applicable thereto, the Secretary will, upon request of the District, negotiate amendments to this contract to conform it to such changes."

That provision does not in any way affect the present contract obligations. It is only a declaration of policy and has no effect upon the validity of the contract.

The last objection is that the findings, the numbers of which are set forth above, were erroneously made because they are conclusions of law and do not support the judgment. The court was obliged to make findings upon the issues presented under the special

proceeding provided for in RCW 87.03.780, *supra*. The findings objected to relate to the validity and propriety of the proceedings and the contract. As stated in *Kinnear v. Graham*, 133 Wash. 132, 233 Pac. 304, (1925),

". . . The purpose of findings is to enable this court to review the questions upon appeal, and when it clearly appears what questions were decided by the trial court, and the manner in which they were decided, we think that the requirements have been fully met."

The findings in this special proceeding enable this court to review all of those questions decided by the trial court and are sufficient to support the judgment.

The judgment in cause No. 37003 is affirmed. The judgment in cause No. 37113 is reversed.

MURRAY J., Pro Tem

We concur:
OTT, C. J.
DONWORTH, J.
HAMILTON, J.
WEAVER, J.

Filed October 10, 1963.

Appendix D

Title 43, U. S. Code, Section 511:

§511. Authority to contract with irrigation district. In carrying out the purpose of the reclamation law, the Secretary of the Interior may enter into contract with any legally organized irrigation district whereby such irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water right applications on the part of landowners and entrymen, in the discretion of the Secretary of the Interior, may be dispensed with. In the event of such contract being made with an irrigation district, the Secretary of the Interior, in his discretion, may contract that the payments, both for the construction of irrigation works and for operation and maintenance on the part of the district shall be made upon such dates as will best conform to the district and taxation laws of the respective States under which such irrigation districts shall be formed, and if he deem it advisable he may contract for such penalties or interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding the provisions of sections 471, 475, 478, 492, and 493 of this chapter. The Secretary of the Interior may accept a partial payment of the amount due from any district to the United States,

providing such acceptance shall not constitute a waiver of the balance remaining due nor the interest or penalties, if any, accruing upon said balance: Provided, That no contract with an irrigation district under this and the two following sections shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid. (May 15, 1922, c. 190, § 1, 42 Stat. 54.).

Title 16 U. S. Code, former Section 835a (e) (ii):

District contracts; provisions for assessment of lands not covered by recordable contracts and for withdrawal of lands from district

(e) Each district contract may include provisions . . .

(ii) That, without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before such date fixed by such board between a date ten days after the official notice of the election on the contract between the United States and the district and the date of such election. The date limiting the

time of such filing shall be announced in the official notice of the proposed election, and lands for which such notice is filed shall be deemed excluded from the district for all purposes as of the time of such filing.

The former subsection 5 (d) of Chapter 275, Laws of Washington, 1943:

Without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before the date fixed by the board between a date ten days after the official notice of the election on the repayment contract and the date of such election. The date limiting the time of such filing shall be announced in the notice of the proposed election and lands for which the notice is filed shall be deemed excluded from the district for all purposes as of the time of the filing.

The former subsection 6 (b) of Chapter 275, Laws of Washington, 1943:

Such of the limitations and provisions of sub-section (a) through (d) of section 5 as are included in repayment contract between the district and the United States shall govern all lands within the district unless otherwise provided in such contract and shall govern notwithstanding any other provisions of the laws of this State.

The pertinent portion of Revised Code of Washington, Section 87.03.200:

. . . if contract is made or is to be made with the United States as in RCW 87.03.140 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No", or words equivalent thereto. And whenever thereafter said board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for said amount or any amount or the question of entering into a contract with the United States, shall be submitted to said electors, it shall so declare, by resolution recorded in its minutes, and may thereupon submit such question to said electors in the same manner and with like effect as at such previous election . . .

Appendix E

From "Motion To Amend Demurrer and Answer", Grant County Cause No. 14298, (R 0049):

COMES NOW the defendant in the above-entitled matter and moves to amend its Demurrer and Answer herein by adding the following allegations thereto by way of further demurrer and affirmative objection:

'Said District in the official notice of said election failed and declined to follow and did in fact violate 16 USCA 835 (a) (e) (ii) which reads as follows:

> 'That, without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before such date fixed by such board between a date ten days after the official notice of the election on the contract between the United States and the District and the date of such election. The date limiting the time of such filing shall be announced in the official notice of the proposed election, and lands for which such notice is filed shall be deemed excluded from the district for all purposes as of the time of such filing.'

and, said District in said notice failed and declined to follow and did, in fact, violate RCW 89.12.050, subsection 4 which reads substantially, the same as 16 USCA 835 (a) (e) (ii) referred to hereinabove.

"This allegation is based upon RCW 89.12.060 and in this connection it is alleged that the original 1945 Repayment Contract between the United States and the District read, by Article 40 thereof, as follows: Lands within the District prior to the District election with respect to this contract may be withdrawn therefrom on compliance with the provision of sub-section 5 (d) of Chapter 275 of the Laws of Washington, 1943."

From "Demurrer and Answer," Franklin County Cause No. 11517, (R 0123):

The notice of election herein involved and referred to in said Petition failed to give landowners the prescribed and fixed opportunity to withdraw from the South Columbia Basin Irrigation District pursuant to the statutes of the United States and the State of Washington which were applicable at the time said notice of election was published which is to say that the election in these proceedings involved and which is referred to in the said Petition was a nullity and the contract for which confirmation is herein sought is unapprovable by this Court.

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MAR 10 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1963

In the Matter of Quincy Columbia Basin Irrigation District

and

In the Matter of the South Columbia Basin Irrigation District

for the

Judicial Examination, Approval and Confirmation of Amendatory Repayment Contracts

No. 825

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENTS IN OPPOSITION

JAMES LEAVY
117 South Third, Pasco, Washington

JOHN W. BAIRD
256 West Division, Ephrata, Wash.

Counsel for South Columbia Basin Irrigation District and Quincy Columbia Basin Irrigation District, Respondents.

In the Supreme Court of the United States

October Term, 1963

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STATEMENT OF THE CASE

Respondents are irrigation districts of the State of Washington which in 1945 contracted with the United States for the construction of irrigation and drainage works to serve the lands on the Columbia Basin Project and to repay a portion of the costs thereof. Subsequently, the need arose to amend these original contracts, primarily in order to capitalize, as construction costs, certain costs of drainage works which under the original contracts had become repayable annually as operation and maintenance charges. Consequently, amendatory contracts with the United States were negotiated by Respondents. These amendatory contracts were then submitted to the vote of the district electorates as required by RCW 87.03.200 and were overwhelmingly approved.

This proceeding is a special statutory action prescribed by Washington statute (RCW 87.03.780) for the judicial examination, approval, and confirmation of the district's **proceedings** authorizing the execution of these amendatory contracts and of the contracts themselves. In the proceedings in the state courts, petitioner's primary premise was "the right of farmers to withdraw from (the) district prior to election, and the necessity of notice thereof." (Appendix C of Petition). This contention, among others, was rejected by the Washington Supreme Court.

ARGUMENT IN OPPOSITION TO GRANTING WRIT

1. Question presented for review not previously raised in state courts.

(a) The question presented for review is stated by Petitioner as follows:

> "When a reclamation project repayment contract between a State Irrigation District and the United States, has been 'confirmed' by a state court of competent jurisdiction, in accordance with the requirements of 43 USC 511, may such repayment contract be thereafter summarily revised and amended by the parties alone, without further reference to said court?"

(b) Supreme Court Rule 23 (f) requires the Petitioner to specify in the statement of the case the manner in which the federal question sought to be reviewed was raised. Petitioner attempted to comply by setting forth in Appendix E of the Petition certain portions of the pleadings. A reading of Appendix E makes it apparent that the question sought to be reviewed was not raised in the state court.

(c) Rule 23 (f) requires the Petitioner to set forth the way in which the question sought to be reviewed was passed upon by the court of first instance and also by the appellate court. The Petition omits this requirement, obviously for the reason that the alleged federal question relied on was not presented to the lower courts. A reading of the State Supreme

Court's decision discloses that this question was neither considered nor ruled upon by the state courts. (Appendix C of Petition).

(d) The question as presented by Petitioner is presented for the first time in their Petition for Writ of Certiorari. Where the question sought to be reviewed was not raised in the state court proceeding, it is not open in proceeding on writ of certiorari, **Ellis v. Dixon,** NY. 1955, 75 S. Ct. 850, 349 U.S. 458, 99 L.Ed. 1231, rehearing denied 76 S. Ct. 37, 350 U.S. 855, 100 L. Ed. 759.

2. No federal question or right under federal statute involved.

Rule 19, Rules of Supreme Court, provides that review on writ of certiorari is not a matter of right, but of sound judicial discretion, and that a federal question of substance must be involved. In addition, 28 USC 1257(3) provides that final judgments rendered by the highest court of a state may be reviewed by certiorari where "any title, right, privilege, or immunity is specially set up or claimed under the . . . statutes . . . of the United States."

(a) 43 USC 511 does not raise such a federal question or create a right in the Petitioners. Petitioners, in an effort to raise a federal question, cite the following portion of 43 USC 511 as the basis for a right claimed under this statute:

". . . no contract with an irrigation district shall

> be binding upon the United States until the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed by a decree of a court of competent jurisdiction . . ."

This statute clearly does not operate to vest in Petitioners any rights under the terms of a repayment contract itself. The statute has no reference to the terms of a contract, but is clearly limited to "the proceedings on the part of the district for the authorization of the execution of the contract." Thus, confirmation under this statute deals only with procedures authorizing the execution of the contract and not with the contract's terms. Consequently, this statute has no relation to repayment contract terms and revision of terms which is the basis of Petitioner's writ. Also, the amendatory contract making the revisions which the Petitioners are referring to, did not involve a payment to the United States or in any way affect the district's repayment obligation to it. In addition, the statute is solely designed for the protection of the United States and its security. Before undertaking the construction of irrigation works, the United States, like a bondholder lending money for the construction of works, must be assured of repayment of the loan by the district and by the lands benefited. Thus, the statute provides for the confirmation of the proceedings on the part of the districts for the authorization of the execution of the contracts to assure the United States that they are authorized to enter into them. This procedure, of course, is de-

signed solely to benefit the United States—not the Petitioners.

It should also be noted that Congress has not set up in this statute or elsewhere any standards to test whether "the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed . . ." The standards and machinery for such proceedings are necessarily covered by state statute. Revised Code of Washington 87.03.200 and 87.03.795. No one can have a vested right in any particular procedure and a court decree confirming and finding that the required procedure has been followed in connection with the authorization of a contract to satisfy the requirements of 43 USC 511, does not assure anyone claiming a right under that contract that the same procedure will be followed in connection with a subsequent amendment thereof. For example, and for illustrative purposes only, the state eliminated the requirement of posting notices in connection with district elections to authorize bond issues and repayment contracts last year by Chapter 63, Section 2, Laws of Washington, 1963; hence, they will no longer be posted as a part of the election procedure in repayment or amendatory repayment contracts. However, if Petitioners' theory was correct, the notices would still have to be posted in any election on an amendatory repayment contract with the United States where the original election procedure has been confirmed by a court to satisfy the requirements of 43 USC 511 in connection with the original

repayment contract. We submit that such would not be the case with respect to those notices or the one the Petitioners are contending should have been given merely because the former procedures had been confirmed by the courts under statute in connection with the original contracts. As irrigation districts are creatures of state law, no federal question can be involved in the procedural requirments of state law in contract confirmation proceedings.

(b) Petitioners further attempt to raise a federal question by citing 16 USC 835a(e), (ii) as one of the statutes involved. This statute merely authorized (on the part of the United States) the inclusion of a provision in a repayment contract permitting withdrawal of land within a specified time. Any question arising from such a contract provision must necessarily involve only a matter of the interpretation of a contract provision under state law.

The full text of 16 USC 835a(e) (ii) provides:

> (e) **Each district contract may include provisions**
>
> (ii) That, without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before such date fixed by such board between a date ten days after the official notice of the election on the contract between the United States and the district and the date of such election. The date limiting the time of such filing shall be announced in the official notice of the proposed election, and lands for which such notice

> is filed shall be deemed excluded from the district for all purposes as of the time of such filing.

The identical provisions were contained in State Statute, Chapter 275, Subsection 5(d), Laws of Washington, 1943.

It is obvious that the above provisions were not self-executing, but to be effective had to be included in the district's contract. Whether or not it would be included in the contract was left up to the parties thereto. In the original contracts executed in 1945, the matter of withdrawal was provided for in Article 40 thereof reading as follows:

> "40(a). Lands within the District prior to the District election with respect to this contract may be withdrawn therefrom on compliance with the provisions of Subsection 5(d) of Chapter 275 of the Laws of Washington, 1943.
>
> 40(b). Lands so withdrawn shall not be entitled thereafter to receive water from, through or by, means of the irrigation system so long as they remain in private ownership."

The question whether Petitioners have a right of withdrawal hinges solely on an interpretation of this contract provision. This is because 16 USC 835a(e)(ii) does not prescribe and require withdrawal, but only authorizes (insofar as the United States is concerned) that the matter of withdrawal may be covered by a contract to which it is a party. Thus, the matter of withdrawal stem from and solely calls for an interpretation of this contract provision. This matter was presented to the Supreme Court of the State of Wash-

ington which concluded that the right of withdrawal was only applicable to withdrawals before the 1945 contracts were signed. (Appendix C of Petition). It is submitted that interpretation of a provision of contract is not a federal question, and this is the rule even when the federal government is a party to such contract. **Schatte v. International Alliance**, 70 F. Supp. 1008 (D.C. Cal.); **Salyer Land Company v. County of Kings**, 285 F 2d 481 (9th Cir. 1960).

Even if 16 USC 835a(e) (ii) were to raise a federal question, it has been repealed by Public Law 87-728, 76 Stat. 677 (October 1, 1962). Therefore, the question, even if it had been a federal one, "is therefore not of public importance". **District of Columbia v. Sweeney**, 310 U.S. 631 (1940), 84 L.ED. 1402.

Identical statutory language was adopted by the Washington State Legislature. Subsection 5(d) of Chapter 275, Laws of Washington, 1943. This law was also repealed. Chapter 3, Laws of Washington, 1963. The issue of the right to withdraw land from the irrigation districts was raised in the state court and decided against the Petitioners, and involved no federal question.

3. Federal question, if any, not one of substance.

(a) Rule 19(a), Rules of Supreme Court, contemplates a review on writ of certiorari only in those cases where a state court has decided a federal question "of substance". It is doubtful if a state court

decision affirming contract proceedings in connection with contracts between respondent irrigation districts and the United States under the applicable provisions of state law, gives rise to any "special or important reasons" for review by the United States Supreme Court as required by Rule 19. "Special and important reasons" relating to the granting of certiorari, refer to problems beyond the academic or episodic, especially where issues involved reach constitutional dimensions. **Rice v. Sioux City Memorial Park Cemetery,** U.S. Iowa 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. ED. 897.

(b) The main issue raised by Petitioners in state court has been the interpretation of RCW 89.12.050 and 16 USC 835a(e) (ii) relating to right of withdrawal, and whether Article 40 of the 1945 repayment contract based on these statutes gave landowners a vested right of withdrawal which they could not be deprived of by the parties to the contract through a subsequent amendment thereo. Since this issue involves solely a matter of contract interpretation, this would not present a federal question even if the United States is one of the contracting parties. **Schatte v. International Alliance,** 70 F.Supp. 1008 (D.C.Cal.); **Salyer Land Company v. County of Kings,** 285 F.2d 481 (9th Cir. 1960). On the other hand, even if the issue involves interpretation of 16 USC 835a(e) (ii) and hence a federal question, it is doubtful if such an issue would involve a question of substance, especially as the statute in question is now repealed. **District of Columbia v.**

Sweeney, Supra. As succinctly stated by the Supreme Court of the State of Washington:

> "In summary, we find the situation to be as follows: The 1945 contracts provided for the withdrawal; 1951 contracts, as amended, eliminated the right; the contracts now under consideration further eliminated it; and, finally, the statutes, 76 Stat. 677, supra, and Laws of 1963, Chapter 3, supra, have eliminated the withdrawal provisions." Appendix C of Petition.

4. Judgment of state court not dependent on federal question.

(a) A judgment resting on grounds adequate to sustain it, independent of any federal question, is not reviewable even though the state court actually decided the federal question adversely to the party by whom the review is sought. 36 C.J.S. Federal Courts, Section 244.

(b) Assuming that a federal question was presented in the lower courts, adequate independent non-federal grounds exist to sustain the judgment. The Petitioners in the lower court relied primarily on the alleged failure of respondent districts to give them notice of the right to withdraw their lands from the districts. This contention was disposed of by the Washington State Supreme Court on valid grounds quite apart from any federal question. (Appendix C of Petition). The applicable law in this situation is stated as follows:

"This Court from the time of its foundation has

adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds . . . The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitation of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." **Herb v. Pitcairn,** Ill., 65 S.Ct. 459, 463, 324 U.S. 117, 89 L. Ed. 789.